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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/943,035 | 08/30/2001 | Yuri Boykov | 2000P07867 US01 | 1205 |
| 7590 | 04/29/2005 | | EXAMINER | |
| Siemens Corporation Intellectual Property Department 186 Wood Avenue South Iselin, NJ 08830 | | | LAROSE, COLIN M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2623 | |

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/943,035 | BOYKOV ET AL. | |
| | Examiner | Art Unit | |
| | Colin M. LaRose | 2623 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 December 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4,6-15 and 17-22 is/are rejected.
- 7) Claim(s) 5 and 16 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Arguments and Amendments

1. Applicant's amendments and arguments filed 20 December 2004, have been entered and made of record.

Claim Objections

2. In view of Applicant's amendments, the previous claim objections under 37 CFR §1.75(a) and (d)(1) have been withdrawn.

Response to Amendments and Arguments

3. Applicant's arguments regarding claims 1 and 12 have been fully considered but they are not persuasive for at least the following reasons.

Applicant argues that Nister does not disclose the defining of object and background "seeds," as claimed (see Applicant's Remarks, pp. 7-8). Applicant alleges hindsight reconstruction but does not appear to offer any rationale or analysis as to why the Examiner's interpretation of Nister is a product of hindsight.

Snow was relied upon to show that, in conventional graph cut segmentation methods, the source node corresponds to foreground objects, whereas the sink node corresponds to background objects. This construction was not made clear in Nister, as Nister seemed to disclose that the sink and source merely corresponded to varying depths of image information. The combination of Nister and Snow is apparently valid since both Nister and Snow are directed to the same endeavor. In fact, Applicant even states that, "the graph disclosed in Snow is essentially

identical to the graph disclosed in Nister” (Applicant’s Remarks, p.8). This supports the contention that the combination is valid and does not suffer from hindsight deficiencies.

Applicant appears to generally allege that Nister does not disclose the claimed “seeds” without specifically assessing or analyzing the Examiner’s interpretation of Nister’s “seeds.” In the prior Office action, the claimed seeds were interpreted to correspond to Nister’s pixels after the assignation of each to either the source or sink nodes. Thereafter, they become “background seeds” or “foreground seeds.”

The claims do not define the term “seed,” nor do they attach special properties, functions, or characteristics thereto. In addition, Applicant’s present remarks shed no light on the definition of “seed,” as Applicant has not provided insight as to how “seed” should be construed or pointed to specific passages in the Specification that define the term. Absent any clarification as to what constitutes a “seed,” the Examiner maintains that the previously presented interpretation is reasonable and therefore valid.

4. Applicant’s remarks regarding claims 5 and 16 are persuasive, and the rejection of those claims has been withdrawn.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-4, 6-10, 12-15, and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication by Nister in view of "Exact Voxel Occupancy with Grpah Cuts" by Snow et al. ("Snow")

Regarding claims 1 and 12, Nister discloses a method of/program storage device for segmenting one or more objects from one or more backgrounds in an image, the method comprising:

defining a plurality of image nodes, each said image node corresponding to one or more pixels of said image (figure 2: each of the 25 pixels constitutes an image node);

connecting pairs of adjacent nodes with n-links, each said n-link weighted with an n-link cost (figure 2: each of the pixels ("image nodes") is connected to its neighboring pixels with links that are weighted by a discontinuity cost; see paragraph 42);

defining a source node (figure 2: V_+);

defining a sink node (figure 2: V_-);

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defining one or more "object" seeds; defining one or more "background" seeds, (figure 3: when a "graph cut" is effected, the pixels on either side of the cut are assigned to either the source node or the sink node, each of which corresponds to a different depth map; the assignment of each of the pixels to a different depth map essentially segments the image into two connective "depths" of the image;

in the conventional arrangement, one of the depth maps, usually the source, corresponds to an object or the foreground, while the other depth map, the sink, corresponds to the periphery or the background; thus, after cutting, each of the pixels is designated as an "object seed" or a "background seed" in that each pixel will either correspond to a foreground object or a part of its background;

however, Nister does not expressly disclose that, "said object seeds correspond to image nodes within said objects" and "said background seeds correspond to image nodes within said backgrounds."

Snow (§ 5.2) shows that, conventionally, the source and sink nodes correspond to the "object" and "background" of the image, respectively, so that in assigning each of the image pixels to either the source or sink, the image foreground, or object, is left disconnected from the background. Snow

illustrates that the source and sink correspond to different "depths" of the image, viz. an object and its background, and therefore, those skilled in the art would have known that Nister's source and sink nodes separate object from background in a similar manner);

connecting said source node with each said object seed with a t-link (i.e. every "object" pixel is connected to the source node via a link; see figure 3: those pixels linked to the source node V_+ are "object" pixels);

connecting said sink node with each said background seed with a t-link (i.e. every "background" pixel is connected to the sink node via a link; see figure 3: those pixels linked to the sink node V_- are "background" pixels);

wherein each said t-links is weighted with a t-link cost (i.e. each of the links between the pixels and the sink and source nodes is weighted; see paragraph 42); and

calculating a segmentation cut having the smallest total cost of all cuts separating said source from said sink, wherein said total cost of each said cut is defined as the sum of the costs of all said n-links and t-links that each said cut severs (paragraph 44: generating a "graph cut" that segments the image is determined as a cut that minimizes the energy costs; in particular, the energy cost is determined as the sum of the costs of all links that are to be

broken --- figure 3 illustrates the four scenarios that arise when a cut is to be made between two pixels; the costs associated with each cut are calculated as the sum of all links that are broken; the optimal cut is the one that minimizes the overall cost).

Regarding claims 2 and 13, Nister discloses the method of claim 1 wherein said n-link cost is a function of a local intensity gradient between said image nodes (paragraph 42: "discontinuity" between pixels).

Regarding claims 3 and 14, Nister discloses the method of claim 2 wherein said n-link cost is the function $f(|I_p - I_q|)$, where, where I_p and I_q are the intensities of image nodes p and q respectively and $f()$ is a non-negative decreasing function (paragraphs 15-18: the energy E of the links is a function of the Gaussian distribution $f(Y, U, V)$, which denotes the probability of adjacent pixels being discontinuous in terms of intensity Y and chrominance U & V; The Gaussian distribution is non-negative and decreasing function that is a function of the absolute value of the difference in adjacent pixel values).

Regarding claims 4 and 15, Nister discloses the method of claim 3 wherein said non-negative decreasing function $f(x) = (K)\exp(-x^2/\sigma^2)$ (paragraphs 15-18: the Gaussian distribution utilized by Nister in paragraph 15 is substantially the same as the claimed function; both represent the well-known Gaussian distribution).

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Regarding claims 6 and 17, Nister discloses the method of claim 1 further comprising: connecting said source node with each said image node with a plurality of t-links; and connecting said sink node with each said image node with a plurality of t-links (see figure 2).

Regarding claims 7 and 18, Nister discloses the method of claim 6 wherein said cost of each said t-link not connected to a seed is a function of the probability that the image node to which said t-link is connected belongs to predefined object and background distributions (i.e. Nister's links between each of the pixels and the source and sink nodes are functions of the probability of each pixel belonging to the associated node; the energy of the links is based on the Bayesian (or "maximum a posteriori") probability metric; see paragraphs 10-12 and 18).

Regarding claims 8 and 19, Nister discloses the method of claim 1 wherein additional seeds may be defined after calculation of said segmentation boundary and a new segmentation boundary recalculated (paragraph 59: the assignment of the pixels as object or background "seeds" may follow an iterative process wherein additional seeds can be defined after recalculation of the cut boundary).

Regarding claims 9 and 20, Nister discloses the method of claim 8 wherein additional seeds are defined near a region where two objects are in contact so as to separate them upon recalculation (paragraph 59: additional seeds are defined and re-defined for the entire image, including such a region).

Regarding claims 10 and 21, Snow discloses calculating of the segmentation boundary is conventionally effected with a max-flow method (§ 4.1).

8. Claims 11 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nister in view of Snow, as applied to claim 1 above, and further in view of “A New Approach to the Max-Flow Problem” by Goldberg et al. (“Goldberg”).

Regarding claims 11 and 22, Snow, as indicated for claims 10 and 21, discloses that the calculating of the segmentation boundary is conventionally effected with a max-flow method. However, Snow is silent to the claimed push-relabel method.

Goldberg discloses the push-relabel method as an improvement on the max-flow method. One skilled in the art would have been motivated to utilize Goldberg’s push-relabel method since it improves upon the max-flow method disclosed by Snow. Therefore, the use of the push-relabel method would have been obvious to those skilled in the art.

Allowable Subject Matter

9. Claims 5 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The claimed are allowed in view of Applicant’s arguments (see Applicant’s remarks filed 20 December 2004, p.9).

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Colin M. LaRose whose telephone number is (571) 272-7423. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amelia Au, can be reached on (571) 272-7414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the TC 2600 Customer Service Office whose telephone number is (571) 272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CML
Group Art Unit 2623
20 April 2005



VICKRAM BALI
PRIMARY EXAMINER